

# NOTICES

SECTION B  
NEWS AND VIEWS  
VOL. 25, NO. 2  
JANUARY 9, 1986

## WRITS OF CERTIORARI

### Petitions for Writ of Certiorari Filed and Pending:\*\*

No. 16175 Stephen J. Mann vs. State 12/9/85  
No. 16183 Tom Cherryhomes vs. Bardacke 12/13/85  
No. 16185 David Peterson vs. State 12/16/85

**\*\*PETITIONS FOR CERTIORARI INVOLVING COA  
MEMORANDUM OPINIONS ARE NOT INCLUDED IN THIS LIST**

### Certiorari Granted and Under Advisement:

No. 15755 State vs. Ball (etc.) 2/12/85  
No. 15848 Jorge Garcia vs. State 5/6/85  
No. 15874 Landrum vs. Security Nat'l 5/17/85  
No. 15905 Ricky Jones vs. State 6/14/85  
No. 15923 Dunning vs. Dunning 6/17/85  
No. 15919 State vs. William Wayne Pitts 6/25/85  
No. 15947 State vs. Juan Lopez 7/3/85  
No. 15960 Valentine Anaya vs. State 7/3/85  
No. 15952 Sanchez vs. City Tucumcari 7/18/85  
No. 15976 State vs. Robert Earl Davis 8/2/85  
No. 16025 Kenneth G. Jaramillo vs. Kaufman Plumbing  
9/13/85  
No. 16047 Fierro vs. Stanley's Hardware 9/19/85  
No. 16056 Andrew Key vs. Genuine Parts 10/1/85

No. 16064 Raul Jake Lopez vs. State 10/1/85  
No. 16084 Sanchez vs. State 10/15/85  
No. 16085 Boone vs. State 10/17/85  
No. 16098 Armenta vs. City Bloomfield 10/23/85  
No. 16103 Palacios vs. Memorial General Hospital  
10/28/85  
No. 16107 Hardin vs. Pinkerton's 10/30/85  
No. 16134 Dept. Human Services vs. Avinger 11/18/85  
No. 16122 Albert Bejar vs. State 11/21/85  
No. 16143 DiMatteo vs. County Dona Ana 11/26/85  
No. 16149 Brown vs. Babcock & Wilcox 12/6/85  
No. 16154 Tracy vs. Bertram 12/6/85  
No. 16172 Madrid vs. University of California 12/17/85

### Petitions for Writ of Certiorari Denied:

No. 16150 Peterson vs. Dept. Human Services 12/6/85

### Writs of Certiorari Quashed:

No. 16067 Natural Resources vs. Carlsbad Irrigation  
12/2/85  
No. 15903 Logan vs. City Albuquerque 12/3/85  
No. 15977 Milne vs. Lieb 12/16/85  
No. 15841 Armijo vs. Martin 12/16/85  
No. 16164 Shelby vs. State 12/17/85

## BAR DUES FOR 1986

FOR THOSE ATTORNEYS WHO HAVE NOT PAID 1986 DUES, PLEASE NOTE THAT A LATE CHARGE OF \$25.00 MUST ACCOMPANY YOUR PAYMENT AFTER JANUARY 31, 1986. A \$50.00 LATE CHARGE WILL BE ASSESSED IF PAYMENT IS RECEIVED AFTER FEBRUARY 28, 1986. PAY EARLY TO AVOID LATE CHARGES.

### BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of  
**JOHN SILKO**  
An Attorney Admitted to Practice Before the Courts  
of the State of New Mexico

Disciplinary No. 03-85-58

### FORMAL REPRIMAND

This matter arose out of your representation of an out-of-state collection agency which specialized in the collection of delinquent student loans. Your contract with this client provided that you would be its exclusive agent in New Mexico and that you and the agency would market its services to institutions of higher education. Your responsibility was to pursue collection efforts on accounts which you received from the agency.

At the outset, the agency prepared demand letters to be sent to each debtor over your signature. If informal means of collection proved ineffective, the agency then prepared complaints for you to file with the appropriate court. From that point forward, you had control of the case. The agency advanced filing fees and costs incurred in connection with any litigation. Any payments made by the debtors, either before or after the institution of legal proceedings (with the exception of attorney's fees awarded to lawyers other than yourself,) were to be sent directly to the agency.

In order to enable the agency to comply with New Mexico collection agency law, you also permitted your office to be used as the full-time local collection office for the agency in New Mexico. A foreign corporation doing business in New Mexico as a collection agency is required to maintain a bona fide local office.

During the Spring of 1984, a dispute arose between you and the agency concerning the amount of compensation to which you were entitled. In accordance with the contract between you and the agency, you were initially to receive twenty-five dollars (\$25.00) from the agency for each account collected after merely sending the demand letter. The debtor was required to pay the twenty-five dollars (\$25.00) in addition to the amount owed to the client school. The agency discontinued the practice of demanding

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the twenty-five dollars (\$25.00) for attorney's fees from each debtor because of its concern that the practice might violate Federal law. Consequently, your contract with the agency had to be renegotiated. As of September 1984, you and the agency had not agreed on a new fee for your services on accounts collected as a result of demand letters, yet you continued to represent the agency in collection matters. To this date you still represent the agency on cases which were assigned to you prior to the beginning of the fee dispute.

A hearing committee found that on September 12, 1984, you advised the State of New Mexico that your client no longer had use of your office. You also surrendered your client's license to conduct business and you suggested to the state regulatory authority that your client might continue to operate in New Mexico, even though its license had been surrendered and the agency no longer had a local office. On October 11, 1984, you again wrote to the state regulatory authority advising that your client owed you money for services rendered, and you requested that the agency not be licensed in New Mexico pending the resolution of your dispute with this client.

Thereafter, you wrote to several of agency's client schools and advised the schools that the agency might no longer be licensed as a collection agency in the State of New Mexico.

Your conduct in requesting the state regulatory authority to deny a license to the agency (your client) and in advising the agency's clients that it might no longer be licensed as a collection agency was nothing more than a series of self-serving attempts to coerce the agency into acceding to your fee demands. Such conduct was highly prejudicial to your client and a violation of Disciplinary Rule 7-101 (A) (3). You have a duty as an attorney to zealously and competently represent your clients, not set up obstacles to their conducting business. Had your request to the regulatory authority been granted, the agency would have been forced out of business. By attempting to use the unethical leverage of reporting your own client to the regulatory authority in an effort to resolve your fee dispute, you have not only eroded public confidence in this profession but also engaged in conduct which adversely reflects upon your fitness to practice law in violation of Disciplinary Rule 1-102 (A) (6).

The hearing committee also found that beginning in October 1984 and continuing until December 1984, you wrote to approximately twenty-five (25) debtors of the client schools directing that henceforth payments on their accounts should be sent to your office and be made payable to you. Your contract with the

agency did not allow you to make such representations to your client's debtors, nor did you request any court, in cases where payment was being made by a debtor pursuant to a judgment, to amend any order to state that payments should be made to you.

The funds collected from the individual debtors were retained by you under the guise of an attorney's charging lien, yet you never formally perfected any such lien. You had no right to demand that the debtors of the client schools make payments directly to you, and you did not receive the funds from the debtors in the ordinary course of your professional relationship with the agency. Therefore, you could not claim a retaining lien against these funds. By demanding that the debtors of the client schools make payments directly to you, be receiving such payments, and by failing to remit the same to the agency as mandated by your contract with the agency, you have violated the terms of Disciplinary Rule 9-102 (B) (4). Disciplinary Rule 9-102 (B) (4) requires an attorney to promptly pay or deliver to the client as requested by a client the funds, securities or other properties in his possession which the client is entitled to receive.

Throughout this dispute with the agency you consistently placed your personal interests above those of your client. You abused your position as an attorney and you took serious advantage of your own client. This type of conduct is disgraceful and will not be tolerated by members of this bar.

In addition to receiving this reprimand, you are further required to take and receive a passing mark on the Multistate Professional Responsibility Examination. Proof of your having done this must be submitted to the Board no later than December 31, 1986. This formal reprimand will be filed with the Supreme Court in accordance with Rule 11(d) of the Supreme Court Rules Governing Discipline and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the Board concerning any discipline ever imposed against you. In addition, in accordance with Rule 11(d), the entire text of this reprimand will be published in the *State Bar of New Mexico News and Views*. The costs of this action in the amount of \$777.33 are assessed against you and should be paid to the Disciplinary Board office on or before December 31, 1985. In addition the costs of preparing the transcript of today's proceedings for filing with the Supreme Court are assessed against you. These are to be paid to the Disciplinary Board office no later than (10) days from your receipt of a copy of that bill.

THE DISCIPLINARY BOARD  
s/ Keith S. Burn, Chairman of the Disciplinary Board

# BULLETIN

ADVANCE OPINIONS OF  
THE SUPREME COURT &  
THE COURT OF APPEALS